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Serial No. 09/889,491
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REMARKS

In the prior Response at pg. 8, Applicant's representative indicated that he would submit a Rule 132 Declaration from Dr. Phillip Kusk ("Declaration"). The Declaration is submitted with this paper for consideration by the Examiner. At the request of the Examiner, a copy of this paper is being sent via facsimile to 703-872-9306.

The Declaration is being submitted in response to the USPTO's rejection of claim 4 (re-written as new claim 25 in the prior Response) as being indefinite. While Applicant respectfully disagrees that the claim is at all indefinite as written, it was felt that submitting the Declaration would further prosecution. It addresses, among other things, 1) the chemical identity of Genbank accession nos. L24756, M55270, D14813, and AB008821; 2) when that sequence information was available to the inventor; and 3) correspondence between the structure of the Genbank sequences and those mentioned in the instant specification.

Turning now to the Declaration, Dr. Kusk states at ¶¶ 1-2 of the Declaration that he is the inventor and currently holds the position of research scientist at NsGene of Copenhagen, Denmark.

Dr. Kusk further states at ¶¶ 6-7 of the Declaration that the list of sequences referred to by Genbank accession numbers L24756, M55270, D14813, and AB008821 are shown attached to the Declaration as **Appendix A**. According to Dr. Kusk, the list shows the chemical identity of each sequence including such particulars as the length of the sequences and positions of each base pair (nucleobase position).

Significantly, Dr. Kusk states in his Declaration that the list of sequences

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represented by Genbank accession numbers L24756, M55270, D14813, and AB008821 was available to him no later than January 18, 1999. That date is well before the US filing date of the present application.

Accordingly, and in full agreement with the Declaration, a worker reading the instant application as of its US filing date would have known the chemical identity of sequences referred to by Genbank accession numbers L24756, M55270, D14813, and AB008821. The worker would have had this information no later than January 18, 1999.

Dr. Kusk further states at ¶¶ 8-9 of the Declaration that the base pair positions of each of the sequences shown in **Appendix A** corresponds to those same positions referred to throughout the patent specification for the same Genbank accession number. That is, the chemical structure of the Genbank sequences and those same sequences disclosed throughout the application are the same according to Dr. Kusk. He illustrates the point at ¶ 9 of his Declaration by referencing SEQ ID Nos. 18 and 13 (claim 25) and SEQ ID Nos. 23 and 24 (claim 28).

In view thereof, there should be no further basis for rejecting claim 4 (canceled in favor of new claim 25) as being indefinite.

Moreover, there should be no basis for requiring Applicant to amend the specification to include sequences referred to by Genbank accession numbers on grounds of complying with 35 USC §112, second paragraph. See the Office Action at pg. 7.

For instance, a worker who read the application as of its filing date would have understood the chemical structure of the sequences referred to by Genbank accession numbers L24756, M55270, D14813, and AB008821 without any ambiguity. The worker would also have appreciated the correspondence between the disclosed sequences in the

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specification and those represented by the Genbank accession numbers. See Dr. Kusk's Declaration.

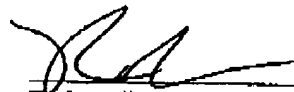
CONCLUSION

Applicants submit that all claims are allowable as written and respectfully request early favorable action by the Examiner. If the Examiner believes that a telephone conversation with Applicants' attorney would expedite prosecution of this application, the Examiner is cordially invited to call the undersigned attorney of record.

Although it is not believed that any further fee is needed to consider this submission, the Office is hereby authorized to charge our deposit account 04-1105 should such fee be deemed necessary.

Respectfully submitted,

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